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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1111

AUGUSTINE L. RANJEL, *et al.*,

Petitioners,

v.

CITY OF LANSING, GERALD W. GRAVES, MAYOR OF LANSING, and THEO W. FULTON, CLERK, CITY OF LANSING.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

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INDEX

PAGE

Petition for Rehearing 1

Conclusion 5

Certificate of Counsel 6

Appendix—

Opinion of Ninth Circuit 1b

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PETITION FOR REHEARING

Petitioners move this Court for an order (1) vacating its order of March 16, 1970 which denied the petition for a writ of certiorari and (2) granting the petition. The ground for this motion is that a decision of the United States Court of Appeals for the Ninth Circuit, *Southern Alameda Spanish Speaking Organization (SASSO)* v. *City of Union City, California,* No. 25,195, decided the same day this Court denied the petition for a writ of certiorari, conflicts in a fundamental respect with the decision of the United States Court of Appeals for the Sixth Circuit in this action and provides an additional reason for granting the writ. The decision of the Ninth Circuit is reproduced in the appendix to this petition, pp. 1b-10b.

In *SASSO* v. *Union City,* the Ninth Circuit considered a situation substantially similar to *Ranjel* v. *City of Lansing*:

the effort of a municipality acting through a referendum to deny a zoning change necessary to construct multiple family dwellings as part of a federally financed housing project which would provide low and moderate income families an opportunity to live outside the city's ghetto. On one point, the Ninth Circuit agreed with the Sixth Circuit. They both took the view, although for different reasons, that courts should not inquire into the motives of voters in a referendum. However, whereas the Sixth Circuit ended its inquiry with its ruling that motive is immaterial, the Ninth Circuit recognized that the fact a governmental decision is reached through a referendum should not bar the further inquiry whether the resulting governmental action has a prohibited discriminatory effect. As the Ninth Circuit held:

> Appellants' equal protection contentions, however, reach beyond purpose. They assert that the effect of the referendum is to deny decent housing and an integrated environment to low-income residents of Union City. If apart from voter motive, the result of this zoning by referendum is discriminatory in this fashion, in our view a substantial constitutional question is presented.
>
> Surely, if the environmental benefits of land use planning are to be enjoyed by a city and the quality of life of its residents is accordingly to be improved, the poor cannot be excluded from enjoyment of the benefits. Given the recognized importance of equal opportunities in housing, it may well be as a matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops accommodates the needs of its low-income families, who usually—if not always—are members of minority groups (8b-9b).

Accordingly, the two circuits are in conflict over the issue whether the impropriety of inquiring into the electorate's motives screens the electorate's decision from review. In the opinion of the Sixth Circuit, the use of a referendum bars review of the referendum's results but in the opinion of the Ninth Circuit discriminatory effect may still be considered.[1]

It has been petitioners' contention since the outset of this litigation that the essential constitutional objection to the effort to deny the zoning change necessary to construct the Jolly-Cedar project in Lansing is that prevention of the housing development would have a discriminatory effect on blacks and Mexican-Americans and that this discriminatory effect could not be justified in the name of any legitimate, let alone compelling, governmental interest. Indeed, the District Court specifically found that repeal of the zoning change would have a "discriminatory effect" on black and Mexican-Americans (23a). Apart from one potentially misleading characterization of the record,[2] the Sixth Circuit foreclosed any inquiry along these lines by holding that referenda are totally free of judicial con-

[1] As *SASSO* v. *Union City* had been appealed on the denial of a preliminary injunction which would in effect grant all the relief sought and as the record did not clearly show that denial of preliminary relief was an abuse of discretion, the order of the district court denying preliminary injunction was affirmed and the case returned to the district court for further proceedings.

[2] The comment by the Sixth Circuit that 100 houses for poor families may still be built if all housing for the elderly is eliminated (32a) should not be read to mean anything more than Lansing's City Planner intended his testimony to mean. While it may be "legally" possible to build low cost housing under existing zoning, the City has never asserted that it is economically feasible to do so and the only evidence in the record on this question is discouraging (Petition for a Writ of Certiorari, p. 13). In any event, there are members of petitioners' class who are elderly, threatened with displacement by public projects, and who require the housing for the elderly which the Sixth Circuit seems willing to abandon.

straint (33a). The result in the Ninth Circuit would have been different. It is petitioners' opinion that the view of the Ninth Circuit is correct and requires a judgment for petitioners, but that in any event it is appropriate for this Court to resolve this conflict between the circuits over this issue of fundamental national importance.

One final word is in order. In *SASSO* v. *Union City,* the Court of Appeals considered the issue after the referendum while in *Ranjel* v. *City of Lansing* the effort is being made to enjoin the referendum. However, to make anything of this difference would be to misunderstand petitioners' basic claim that given the facts of this case—an overcrowded racial ghetto, available land which would relieve ghetto overcrowding and provide an opportunity for integrated living, and no legitimate governmental reason to prevent the project—the City is barred from using zoning controls to prevent the development of this needed housing. This would have been true if the City Council in the first instance had decided to block the project by a refusal to rezone. The claim is no different now that it is a referendum which threatens to implement the zoning law in a way which prevents the development of Jolly-Cedar, and further, the facts which lead to the constitutional necessity to rezone are the same whether they be considered before or after the referendum. That petitioners chose to bring their claims to the District Court prior to the referendum does not alter any of the facts concerning the project. Admittedly, there was always the slight possibility that the voters would approve the project but against that slim chance there was the spectre of disastrous public disorders of the Summer of 1967 (some of which were fired by disputes over public projects) and the Spring of 1968. It therefore seemed prudent to bring this dispute into a court of law in June 1968 at which time all essential facts could be determined rather than wait until after a summer referen-

dum with the enormous risks which that course would entail. As sound a rule as it may be that the judicial hand should be stayed until there is absolutely no alternative, this case is an appropriate exception to that rule. Furthermore, it does little to enhance the right to vote to allow the act of voting with the knowledge that the result of voting will be disallowed. The electorate might very well prefer to be told that in certain circumstances there is but one constitutionally correct result rather than be put through an empty exercise of voting only to have its decision voided.

CONCLUSION

For the foregoing reasons as well as those contained in the petition for a writ of certiorari, petitioners pray that this Court grant rehearing of the order of denial, vacate the order, grant the petition and review the judgment below.

Respectfully submitted,

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Certificate of Counsel

As counsel for the petitioners, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

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